

## REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the following commentary.

### I. Status of the Claims

Claim 1 has been amended to incorporate the recitation of claim 2, and the dependency of claim 3 has been revised accordingly. Claim 2 is cancelled, too, and claim 10 was cancelled before.

These amendments reduce the issues for appeal and do not require any additional search. Applicants therefore request their entry after final rejection. Upon entry of this response, claims 1, 3-9, and 11-14 will be pending.

### II. Rejection of Claims under 35 U.S.C. § 102

The Examiner lodged anticipation rejections of (i) claims 1 and 4 over Lowenheim (WO 99/42088), (ii) claims 1, 4-9, 11, and 12 over Li *et al.* (US 2002/0151491), and (iii) claims 1, 4-9, 11, and 12 over Nicotera *et al.* (US 2004/0019015). Applicants respectfully traverse each of these.

By virtue of these rejections, the Examiner also indicates that he considers claims 2 and 3 as *not* anticipated by any of the cited references. It necessarily follows that amended claim 1, incorporating the salient recitations of claim 2, likewise is not anticipated. Accordingly, Applicants respectfully request withdrawal of the rejections under section 102.

### III. Rejection of Claims under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-9 and 11-14 over Meijer (WO 01/41768) in view of Nicotera *et al.* (US 2004/0019015) and Schaefer *et al.* (US 6,096,873). Applicants respectfully traverse.

More specifically, the Examiner asserts that the skilled artisan “would have been motivated to use the method of Meijer to treat hearing loss caused by nerve damage because Schaefer teaches that neurodegenerative disorders include nerve deafness. One of ordinary skill in the art would have had a reasonable expectation of success because Nicotera teaches using protein kinase inhibitors to

treat hearing loss in the same formats as Meijer and at the same dosage.” Office action at page 7, last paragraph (citation omitted).

This rationale is flawed in several aspects, however. First, the claimed method is directed to treating deafness by administering a purine-derivative kinase inhibitor to *induce cell differentiation*. By contrast, Meijer teaches the use of hymenialdisine in treating neurodegenerative diseases by *preventing cell death*. Clearly, cell differentiation is in an entirely different context from cell death. Therefore, the skilled person would not have consider it obvious to come up with the claimed method based on the teaching of Meijer.

Second, Schaefer discloses a novel polypeptide and merely lists nerve deafness as one of the neurodegenerative disorders. It does not describe a method for treating deafness. Meijer also relates to a chemical compound, hymenialdisine, while Schaefer discloses a polypeptide that comprises a fragment of  $\gamma$ -HRG. Therefore, the motivation to combine Meijer and Schaefer is lacking in the art.

Third, Nicotera does not teach the claimed purine derivative kinase inhibitor but a protein tyrosine kinase inhibitor. Even if the skilled artisan would have used the protein tyrosine kinase inhibitor to treat hearing loss “in the same formats as Meijer and at the same dosage,” as the Examiner asserts, he would not have used the claimed purine derivative kinase inhibitor in the same formats and at the same dosage, since they are and would have been perceived as different kinase inhibitors.

On these grounds, at least, the Examiner fails to establish a *prima facie* case of obviousness. Applicants respectfully request withdrawal of the rejection to the pending claims, therefore.

### CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned directly, should she feel that any issue requires further consideration.

The Commissioner is hereby authorized to charge any additional fees, which may be required regarding this application under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, Applicants hereby petition for such extension under 37 CFR §1.136 and authorizes payment of any such extensions fees from the deposit account.

Respectfully submitted,

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